IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 2415 OF 1994

SHRI NITINKUMAR SUKHADEO CHAVAN)
aged 19 years, student, residing at)
raval Nagar, Dondaicha, Taluka)
Sindkheda, District Dhule.)..... Petitioner

V/S

1. The Director, Tribal Research)
   & Training institute , Maharashtra)
   State, Pune 411 001.)

2. The Scheduled Tribe Caste)
   Certificate Scrutiny Committee,)
   Maharashtra State, Pune.)

3. The Tahsildar and Executive)
   Magistrate Sindkheda,)
   District Dhule.)

4. The State of Maharashtra.)

5. Assistant Registrar,)
   College of Agriculture)
   Dhule, Dist. Dhule.)

6. Registrar, Mahatma Phule Krishi)
   Vidyapeeth Rahuri Dist. Ahmednagar) ... Respondents

Shri R. K. Saroj i/b. Shri Shirish V. Pitre, for petitioner.

Shri C.R. Sonawane, AGP for respondent nos. 1 to 4.

None for respondent nos. 5 and 6.

CORAM: R.M.S. KHANDEPARKAR
&
MRS. ROSHAN DALVI JJ.

RESERVED DATE:17/03/2006
DELIVERED ON: 12/04/2006

JUDGMENT : (Per ROSHAN DALVI J.)

1. The petitioner has challenged the order dated 29.6.92 of the Scheduled Tribe Caste Certificate Scrutiny Committee, Maharashtra State, Pune, (Scrutiny Committee) bearing No. TCSC. EBN.NS-44 and has applied for a writ of certiorari to quash and set aside the said order and letters issued by respondents 5 and 6 calling for the petitioner's original caste certificate and a declaration that the petitioner belongs to Tokre- Koli Scheduled Tribe.

2. The petitioner has produced a certificate showing that he belongs to Tokre- Koli Scheduled Tribe. He obtained admission to College and has completed the graduation course and obtained B.Sc. (Agril.) degree from the College of Agriculture at Dhule. The petitioner has produced documents of himself, his father and his uncles, which have all been

considered by the Scrutiny Committee to arrive at the aforesaid decision, which is impugned in this petition.

3. The Scrutiny Committee has considered the birth certificate of the father of the petitioner wherein his caste is clearly shown as 'Koli' which has not been recognized as a Scheduled Tribe in Maharashtra. The Committee has further considered that these documents related to the period prior to 1947, i.e., before the First Presidential Order of 1950, and hence carried great evidentiary value. The Committee further considered that the petitioner's own birth certificate does not mention the caste, despite having a column therein and the surname of the petitioner's mother is shown as 'Koli', which is a surname derived from the caste. It is only the later documents of the petitioner which show his caste to be 'TO-KOLI', and later *Tokari Koli*. These documents do not tally with the older documents of his father.

4. The Committee has also considered that the certificate issued by the Executive Magistrate was on the basis of the *Dakhala* issued by the President, Tapi Parisar Koli Samaj Dondaicha

which itself indicated that it represented the Samaj of the Koli and not the Tribe of Tokare Koli. The Committee has therefore rejected the *Dakhalas,* as not showing the Scheduled Tribe claimed by the petitioner. The Committee gave a personal hearing to the petitioner as well as to his father on 23.1.1992 to consider his claim with regard to the traits, characteristics, customs, Gods / Goddesses as well as traditional occupation etc. They considered the dialect spoken by Tokare Kolis which was not known to either of them and the other dialect spoken by them which was not the dialect of Tokare Kolis. The Committee also considered the usual surnames of the community which are not amongst the Tokare Koli Tribe.

5. After considering the entire documentary evidence relied upon by the petitioner as well as giving him and his father a personal hearing, the Scrutiny Committee concluded that the petitioner belongs to Koli caste and that his certificate as belonging to Tokare Koli scheduled tribe is incorrect. It has therefore been cancelled and confiscated.

6. The petitioner has not shown any error apparent on the

record or any material irregularity with the said order. It therefore does not call for any interference by us in the writ jurisdiction.

7. We may refer to the Supreme Court judgment in the case of **State of Maharashtra vs. Milind and ors.** [2001 SCC (L&S) 117], wherein it was observed by the Hon'ble Supreme Court:

> "…. Even some better-placed persons by producing false certificates as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution."
>
> "…… If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the

> candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution."

8. Following Milind's case (supra) is the judgment in the case of **R. Vishwanatha Pillai vs. State of Kerala and ors.** [2004 SCC (L&S) 350], which was a case of a candidate who obtained appointment in the service on the basis that he belonged to a Scheduled caste and was later on found by the Scrutiny Committee not to belong to that caste. It was observed by the Apex Court that the very basis of his appointment was taken away when the Scrutiny Committee found that he did not belong to the community that he claimed. Consequently his appointment was no appointment in the eye of law. It was observed:

> "... He cannot claim a right to the post he had usurped; the post meant for a reserved candidate by playing a fraud and producing a

false caste certificate..."

It was held that the appointment from its inception would not enable the appellant to claim his rights under Article 311 of the Constitution of India.

9. The same position has been reiterated in the case of **Bank of India and anr. vs. Avinash D. Mandivikar and ors.** [(2005) 7 SCC 690 in which case the Respondent obtained appointment in the service on the basis that he belonged to a Scheduled Tribe. The Scrutiny Committee's finding was otherwise. It was held that the very foundation of his appointment collapsed and his appointment was no appointment in the eye of law. Hence the Apex Court, following R. Vishwanatha Pillai's case (supra) clarified that the protection granted in Milind's case (supra) cannot be extended to Respondent no.1 in that case.

10. Considering the aforesaid judgments the petitioner cannot be given any benefit in future posts, based upon the claim that he belonged to the Scheduled Tribe of Tokare Koli. The order of the Scrutiny Committee requires no interference and cannot be set aside.

11. The petitioner belongs to Koli caste and not Tokare -Koli Tribe. Though he has obtained his graduation upon the certificate which does not reveal true facts, even though it may not be fraudulently obtained, his educational qualification is not to be disturbed, but it is clarified that the petitioner shall not be entitled for any further advantage, either in his further studies or in employment based upon his certificate, as belonging to Tokare Koli Scheduled Tribe.

12. In the circumstances the petition is dismissed. Rule discharged with no order as to costs.

(MRS. ROSHAN DALVI J.) (R.M.S.KHANDEPARKAR J)